

Message Text

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ACTION EUR-12

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H-02 INR-07 L-03 NSAE-00 OIC-02 OMB-01 PA-01 PM-03

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C O N F I D E N T I A L GENEVA 4875

FOR EUR/RPM

E.O. 11652: GDS

TAGS: CSCE, PFOR, XG

SUBJECT: CSCE: FRG PROPOSAL TO HEAD OFF UN REGISTRATION OF
FINAL DOCUMENTS

REF: STATE 146705

1. SUMMARY: FRG DELEGATION ARGUES THAT TO FORECLOSE ANY
POSSIBILITY THAT CSCE FINAL DOCUMENTS MAY BE SEEN AS HAVING
LEGALLY BINDING CHARACTER, SOME STEP SHOULD BE TAKEN TO ENSURE
THAT THE DOCUMENTS ARE NOT REGISTERED WITH THE UN AS AN INTER-
NATIONAL AGREEMENT UNDER TERMS OF ARTICLE 102 OF THE UN CHARTER.
WEST GERMAN REPS BELIEVE THE BEST WAY OF DEALING WITH THE
MATTER WOULD BE TO HAVE FINNISH GOVERNMENT SEND LETTER TO
THE UN SECRETARY GENERAL ON BEHALF OF ALL CSCE PARTICIPANTS
PROCLAIMING "NONREGISTERABILITY" OF CSCE DOCUMENTS. MOST
NATO ALLIES SEEM SYMPATHETIC TO THE PROPOSAL. INFORMAL
SOUNDINGS INDICATE THAT WARSAW PACT PARTICIPANTS
MIGHT ALSO BE READY TO GO ALONG. ACTION REQUESTED:
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DEPARTMENT'S REACTION TO FRG PROPOSAL. END SUMMARY.

2. AT NATO HEADS OF DELEGATION MEETING ON JUNE 24 FRG DELEGATION CHIEF (BLECH) RECALLED THAT ARTICLE 102 PROVIDED FOR REGISTRATION OF "EVERY TREATY AND EVERY INTERNATIONAL AGREEMENT ENTERED INTO BY ANY MEMBER OF THE UNITED NATIONS". HE NOTED THAT IN PRACTICE THE UN WILL REGISTER JUST ABOUT ANY DOCUMENT PRESENTED BY A MEMBER STATE. THE FRG SHARED THE COMMON DESIRE TO AVOID ANY SUGGESTION THAT THE CSCE DOCUMENTS WERE LEGALLY BINDING. SINCE UN REGISTRATION WOULD LEND CONSIDERABLE JURIDICAL WEIGHT TO THE DOCUMENTS, THE FRG BELIEVED SOMETHING SHOULD BE DONE TO HEAD OFF THE POSSIBILITY THAT AN INDIVIDUAL PARTICIPANT MIGHT ON ITS OWN VOLITION PRESENT THE DOCUMENTS FOR REGISTRATION.

3. IN THE WEST GERMAN VIEW THE BEST WAY TO ACHIEVE THIS END WOULD BE TO HAVE THE PARTICIPANTS THEMSELVES INFORM THE UN THAT THE DOCUMENTS WERE NOT CONSIDERED ELIGIBLE FOR REGISTRATION UNDER ARTICLE 102. WITH SUCH A STATEMENT ON RECORD THE UN SECRETARIAT WOULD NOT BE LIKELY TO ACCEPT THE DOCUMENTS FOR REGISTRATION EVEN IF ONE PARTICIPANT ATTEMPTED TO CONTRADICT THE GENERAL INTERPRETATION OF THEIR LEGAL STATUS. THE STATEMENT COULD NOTE SIMPLY THAT THE PARTICIPANTS WERE AGREED THAT THE CSCE DOCUMENTS REPRESENTED UNDERTAKINGS OF A NON-BINDING NATURE AND THAT AS SUCH THEY WERE NOT APPROPRIATE FOR REGISTRATION UNDER ARTICLE 102.

4. BLECH SUGGESTED IT WOULD BE APPROPRIATE FOR THE FINNISH GOVERNMENT AS HOST OF STAGE III TO SEND THE STATEMENT IN A LETTER TO THE SECRETARY GENERAL. THE BODY OF THE LETTER COULD BE AGREED IN THE COORDINATING COMMITTEE BEFORE HAND AND THE TEXT GIVEN TO THE FINNS FOR ADDITION OF FORMAL OPENING AND CLOSE AND TRANSMISSION. THE DUTCH AMBASSADOR ADDED THAT HE HAD RAISED THE IDEA DURING INFORMAL CONTACTS WITH THE ROMANIANS AND THE FINNS ON THE FORM OF THE FINAL DOCUMENT. BOTH HAD SEEMED RECEPTIVE TO THE IDEA. THE ROMANIANS THOUGHT ALL WARSAW PACT PARTICIPANTS WOULD FIND IT ACCEPTABLE.

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5. NATO DELEGATION CHIEFS APPEARED GENERALLY RECEPTIVE TO THE FRG PROPOSAL. HOWEVER, SEVERAL DELEGATION, INCLUDING OURSELVES, POINTED OUT THAT TRANSMISSION OF SUCH A STATEMENT WOULD NOT OBTAIN THE NEED FOR A DISCLAIMER IN THE FINAL DOCUMENT ITSELF ON THE NON-BINDING NATURE OF CSCE UNDERTAKINGS. MANY DELEGATIONS SEEMED TO BELIEVE THAT A SENTENCE ALONG THE LINES OF THE US REVISION OF THE CANADIAN PROPOSAL (REFTEL) WOULD BE SUITABLE FOR THIS PURPOSE IF IT CAN BE

ACCEPTED BY FULL CSCE.

6. COMMENT: THE FRG PROPOSAL SEEMS TO US TO OFFER A FURTHER MEANS OF PUTTING ON THE OFFICIAL RECORD THE FACT THAT CSCE UNDERTAKINGS ARE OF A NON-BINDING CHARACTER. SINCE ACCEPTANCE OF THE SOVIET PREFERENCE FOR SIGNATURE AT THE END OF ALL TEXTS SEEMS INCREASINGLY LIKELY, WE HAVE ALSO BEGUN SHOWING THE PROPOSED DISCLAIMER TEXT (REFTEL) TO INTERESTED DELEGATIONS. THE REACTION SO FAR HAS BEEN POSITIVE. IN ADDITION TO NATO DELEGATIONS THE SOVIETS HAVE SAID THEY COULD ACCEPT SUCH A SENTENCE. TAKEN TOGETHER THE FRG PROPOSAL AND THE DISCLAIMER IF THEY CAN BE AGREED BY FULL CSCE WOULD SEEM TO PROVIDE CONSIDERABLE SUPPORT TO THE

DEPARTMENT'S EFFORTS TO DEMONSTRATE THAT THE CSCE DOCUMENT WILL NOT BE LEGALLY BINDING. DEPARTMENT'S VIEWS REQUESTED.
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